

Members

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Sen. Brent Waltz
Sen. James Arnold
Sen. Jean Breaux
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Rep. John Day
Rep. Cleo Duncan
Rep. Phyllis Pond
Judge Marianne L. Vorhees
Greg DeVries
Robert Bishop
Bruce Pennamped



CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

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MEETING MINUTES¹

Meeting Date: November 30, 2007
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Brent Steele, Chairperson; Sen. Brent Waltz; Rep. John Day; Rep. Cleo Duncan; Rep. Phyllis Pond; Greg DeVries; Bruce Pennamped.

Members Absent: Sen. James Arnold; Sen. Jean Breaux; Rep. Vanessa Summers; Judge Marianne L. Vorhees; Robert Bishop.

Senator Steele, Chairperson, called the third meeting of the Indiana Child Custody and Support Advisory Committee ("Committee") to order at 1:40 PM.

Paternity and Child Support (PD 3594)

Ms. Wendy Yerkes, the Deputy Director of the Child Support Bureau, Department of Child Services ("Department"), testified that the purpose of the proposed legislation,

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Preliminary Draft 3594² ("PD 3594"), was to establish a pilot program that would provide additional administrative procedures to streamline the administrative process before child support cases get to court. She noted that provisions in PD 3594 regarding notice requirements and allowing a party to appeal an order provide necessary safeguards. In response to questions about the costs of implementing the new administrative procedures, Ms. Yerkes indicated that she did not have a definite fiscal number for the costs of adding administrative law judges ("ALJs") and additional workers. She indicated that because of budget constraints, the Department was considering approving no more than three or four counties for participation in the pilot program. Ms. Yerkes indicated that some of the costs would be paid by the state. In response to questions concerning criteria for selecting the counties, Ms. Yerkes indicated that the Department may look at counties with higher caseloads or lower collections to push up the numbers for the amount of child support collected.

Mr. Bruce Pennamped, a member of the Committee, indicated that the family law section of the Indiana State Bar Association had been polled and the attorneys were concerned with the language in PD 3594. He stated that the attorneys were not in support of this legislation and did not believe the legislation would help. He noted concern for indigent individuals working through the system that would be established under PD 3594. He stated that an individual would have to go through three administrative layers before the individual would be able to get into a civil court. He also stated that there was concern regarding: (1) qualification requirements for caseworkers and ALJs; and (2) allowing ALJs to modify child support orders that have been established by a court. Mr. Pennamped read a fax³ from Mr. Davis, an attorney, that summarized Mr. Davis's concerns with PD 3594. Mr. Pennamped pointed out that there may be constitutional and other issues regarding PD 3594.

Ms. Yerkes indicated that the Department may hire private attorneys to act as ALJs. She stated that the administrative procedures established under PD 3594 would speed up the child support process, and that at this time an individual may wait six to nine months to get into court to establish paternity and child support. She noted that the federal government requires the Child Support Bureau to seek review of child support if requested by a party. Ms. Yerkes testified that other states use processes that are similar to those set out in PD 3594. She indicated that the Department is open to discussion on the proposed legislation but that there is a problem in the child support process that needs to be addressed.

Mr. Andrew Soshnick, a family law attorney and representative of the family law section of the Indiana State Bar Association, testified that the family law attorneys that were polled raised the following concerns regarding PD 3594:

- (1) The costs associated with the administrative procedures established under PD 3594. The changes in PD 3594 may not be the most effective way to resolve the problems with the collection of child support.
- (2) The appointment of and qualification requirements for ALJs and caseworkers. The attorneys have concerns with separation of powers and equal protection. The ALJs and caseworkers would be nonjudicial officers establishing enforceable orders.

² Exhibit 1

³ Exhibit 2

(3) The ability of ALJs and caseworkers to adequately handle pro se litigants. The ALJs and caseworkers may not have the necessary skill and knowledge in dealing with pro se litigants.

(4) The review and adjustment of child support orders by an ALJ. An ALJ may not have the expertise to determine an adjustment of child support.

(5) The question of what mechanisms will be used to enforce the Department's orders.

(6) The extent of the data in establishing PD 3594. Whether the other states that were looked at in making the changes to the law under PD 3594 are a fair paradigm for Indiana.

Senator Steele pointed out that under PD 3594 pro se litigants may not be treated any differently than they are under the current court system. He also asked why the community of attorneys have not already stepped up to the plate on the issues of child support and parenting time, as there has been a problem for some time.

Mr. Soshnick stated that the attorneys are in general supportive of the policy behind PD 3594 to address the problem of establishing and enforcing child support, but that PD 3594 in its current form causes concern.

In response to Committee members' questions concerning the potential constitutional issues, Mr. Soshnick indicated he had concerns that an order would be issued by a non-elected officer. He stated that under PD 3594 the executive branch would be performing a judicial function. He also noted that it is important that litigants have a day in court.

Senator Steele asked if Ms. Yerkes could provide the study of expedited child support processes to the Indiana State Bar Association. Ms. Yerkes indicated that she would send the study to the Association to be placed on the family law section listserve.

Mr. Chris Worden, a family law attorney, indicated that the process established in PD 3594 would require people who are less well off to go through a longer administrative process. He stated that a mediator may be more helpful, and could gather information and advise parties of their rights. He also indicated that he was not sure that the changes in PD 3594 are the most effective way to increase the collection of child support.

Joint Legal Custody (PD 3379)

Representative Phyllis Pond, Committee member, testified that PD 3379⁴ would establish a rebuttable presumption for an award of joint legal custody in a dissolution of marriage. She indicated that this may also help with the collection of child support.

Mr. Pennamped stated that there may need to be a mechanism for resolving disputes when parents do not agree on issues regarding a child.

Mr. Joe Dunagan, a noncustodial parent, stated that fathers should be able to share joint physical and legal custody of their children.

⁴ Exhibit 3

Adjournment

There being no further business to conduct, Senator Steele adjourned the meeting at 3:55 PM.